#16 B. Bond 4/10/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Walker	:	Before the Examiner: T. Vu
Serial No.: 08/883,710	:	Group Art Unit: 2152
Filed: June 27, 1997	:	Intellectual Property Law
Title: COMMUNICATION NETWORK HAVING ADJUSTABLE RESPONSE TIMEOUTS AND THE METHOD THEREFOR	: : : :	IBM Corp. Dept. 972/B656 P.O. Box 12195 Research Triangle Park, NC 27709

March 29, 2001

APPLICANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF APPEAL

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This brief is being submitted pursuant to 37 C.F.R. § 1.193(b)(2)(ii). Applicant is furnishing herewith three (3) copies of this brief.

CERTIFICATION UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Box AF , Assistant Commissioner for Patents, Washington, D.C. 20231, on March 29, 2001.

Serena Beller
Signature

Serena Beller
(Printed name of person certifying)

I. INCORPORATION BY REFERENCE

The Applicant hereby incorporates herein by reference Sections I-III, V, VIII of the Applicant's Brief in Support of Appeal mailed November 6, 2000.

II. STATUS OF AMENDMENTS

An amendment proposing changes to the Drawings and Specification to correct draftsman's and typographical errors has been filed concurrently herewith.

III. ISSUES

Are Claims 1-19 properly rejected under 35 U.S.C. §102(e) as being anticipated by Ellis (U.S. Patent No. 5,719,882)?

IV. GROUPING OF CLAIMS

Claims 1, 5 and 6 form a first group.

Claims 2 and 4 form a second group.

Claims 7, 14 and 15 form a third group.

Claims 3, 8, 9, 10, 11, 12, 13, 16, 17, 18 and 19 should not be grouped together and should be considered separately.

The reasons for these groupings are set forth in Applicant's arguments in Section V.

V. ADDITIONAL ARGUMENT

Applicant filed a Brief in Support of Appeal on November 6, 2000 in response to a final rejection of all pending claims in the Application. Claims 1-6 stood rejected under 35 U.S.C. §102(e) as being anticipated by Ellis. Claims 7-19 stood rejected under 35 U.S.C. § 103 as being unpatentable over Ellis in view of Chao et al. (U.S. Patent No. 5,964,837).

The Examiner has vacated the final rejection and withdrawn the rejection of Claim 19 under 35 U.S.C. §112, second paragraph.

Claims 1-19 are not properly rejected under 35 U.S.C. §102(e) as being anticipated by Ellis

The Office Action (dated December 29, 2000) has rejected claims 1-19 under 35 U.S.C. §102(e) as being anticipated by Ellis (U.S. Patent No. 5,719,882). Applicant respectfully traverses the rejections and respectfully requests that the Examiner reconsider and withdraw all outstanding rejections. As the Examiner is well aware, for a claim to be rejected under §102, each and every claim limitation must be found within the cited prior art reference.

Ellis does not disclose "measuring a first amount of time between transmission of the first information frame and receipt of the first response uses a *timer* operating in response to a clock, and wherein said *response time value is a response time value of said timer*" as recited in claim 1. Instead, Ellis discloses that "in a column 95, for each network device, a *counter* (RESPONSE#) is stored which *keeps track of successful responses from the network device*." See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is *incremented*." See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular network device configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *count in Ellis is not a timer*. Therefore, Ellis does not disclose a *timer*. Neither does Ellis disclose that the *response time value is a response time value of the timer*. (1)

Ellis does not disclose "initiating operation of a *timer* with a first response time" as recited in claim 7. Instead, Ellis discloses that "in a column 95, for each network device, a (2)

examiner interprets the count in Ellis as timer. (Give reason)

counter (RESPONSE#) is stored which *keeps track of successful responses from the network device.*" See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is *incremented.*" See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular network device is configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *counter in Ellis is not a timer*. Therefore, Ellis does not disclose initiating operation of a *timer* with a first response time.

Ellis does not disclose "*selectively incrementing the first response time* when the first query response has been received" as recited in claim 7. Instead, Ellis discloses that "when a message has been sent to the network device and a response received, in a step 103, hub manager 51 *checks to see whether the elapsed time between sending a message and receiving a response* (*RESPONSETIME*) *is greater than the stored value of MAXTIME.* RESPONSETIME time is measured from the last retry sent. *If so*, in a step 104, *MAXTIME* is set to *RESPONSETIME* and RETRYTIME is set to twice RESPONSETIME." See Column 5, Line 66 - Column 6, Line 7. As interpreted by the Applicant, Ellis discloses that the response time is set to the time it took the response to be received when the response time is greater than the stored value. Ellis does not disclose *selectively increment* the first response time when the first query response has been received.

Ellis does not disclose "a *timer* for *measuring a first amount of time between transmission of the first information frame and receipt of the first response*, the *timer* being *coupled to the interface means*" as recited in claim 17. Instead, Ellis discloses that "in a column 95, for each network device, a *counter* (RESPONSE#) is stored which *keeps track of successful responses from the network device.*" See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is

incremented." See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular counter associated with a particular network device is configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *counter in Ellis is not a timer*. Therefore, Ellis does not disclose a *timer*. Neither does Ellis disclose a *timer coupled to the interface means*.

Ellis does not disclose "a *central processing unit coupled to the timer* for selectively modifying a response time value in response to the first amount of time" as recited in claim 17. Applicant has performed a word search of "central processing unit", "computer", and "processor" in Ellis and was not able to locate the words "central processing unit", "computer", and "processor" or derivations of them. Applicant kindly requests the Examiner to particularly point out in Ellis were a *central processing unit* is disclosed.

For at least the above reasons, claims 1, 7 and 17 are not anticipated by Ellis. Claims 2-6, 8-16 and 18-19 recite combinations of features including the above combinations, and thus are not anticipated for at least the above reasons as well. Claims 2-6, 8-16 and 18-19 recite additional features which, in combination with the features of the claims upon which they depend, are not anticipated by Ellis.

For example, Ellis does not disclose "*incrementing an initial response time value by a timer resolution value*, to form the response time value" as recited in claim 2 and similarly in claim 8. Instead, Ellis discloses that "when a message has been sent to the network device and a response received, in a step 103, hub manager 51 *checks to see whether the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the stored value of MAXTIME*. RESPONSETIME is measured from the last retry sent. *If so*, in a step 104, *MAXTIME is set to RESPONSETIME* and RETRYTIME is set to twice

RESPONSETIME." See Column 5, Line 66 – Column 6, Line 7. As interpreted by the Applicant, Ellis discloses that the response time is set to the time it took the response to be received when the response time is greater than the stored value. Ellis does not disclose *incrementing an initial response time value by a timer resolution value.*

Ellis does not disclose "wherein the *initial response time value* is *incremented up to a maximum response time value*" as recited in claim 3 and similarly in claim 16. Instead, Ellis discloses that "when a message has been sent to the network device and a response received, in a step 103, hub manager 51 *checks to see whether the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the stored value of MAXTIME.* RESPONSETIME time is measured from the last retry sent. *If so*, in a step 104, *MAXTIME is set to RESPONSETIME* and RETRYTIME is set to twice RESPONSETIME." See Column 5, Line 66 - Column 6, Line 7. As interpreted by the Applicant, Ellis discloses that the response time is set to the time it took the response to be received when the response time is greater than the stored value. Furthermore, Ellis discloses that "when a timeout occurs, in a step 114, RETRY# is *incremented* and hub manager 51 waits for the next contact attempt, in step 111, before making further adjustments to RETRY#. If a response is received, in a step 113, the counter RESPONSE# is incremented. In a step 115, the value of counter RESPONSE# is checked. If RESPONSE# does not equal 1000, hub manager 51 returns to step 111 and waits for another contact attempt before making further adjustments to RETRY#. If RESPONSE# equals 1000, in a step 116, RETRY# is *decremented* and the counter RESPONSE# is cleared." See Column 6, Lines 33-45. Ellis further discloses that the "the first message from the first network device to the second network device *is resent a number of times equal to the retry value* for the second network device." See Column 1, Lines 65-67. As interpreted by the Applicant, Ellis discloses that the retry value, *which refers to the number of times the first*

message is resent, is incremented when a timeout occurs and decremented when the counter reaches the value of 1000. Therefore, Ellis does not disclose that the *initial response time value* is *incremented up to a maximum response time value.*

Ellis does not disclose "*setting a transmit sequence value* when the first frame of information is transmitted" as recited in claim 9. Instead, Ellis discloses that "initially, as shown in a step 101, the *maximum response time (MAXTIME) is set to some initial value.* For example, the initial value may be three seconds. *RETRYTIME is initialized to twice the value of MAX-TIME.*" See Column 5, Lines 59-63. As interpreted by the Applicant, Ellis discloses only initializing the response time and the time between retries but does not disclose *setting a transmit sequence value* when the first frame of information is transmitted.

Ellis does not disclose "*comparing the transmit sequence value* and a *receive sequence value* when the first response is received" as recited in claim 9.

Ellis does not disclose "*idling operation of the response timer when the transmit sequence value corresponds to the receive sequence value*" as recited in claim 9. Instead, Ellis discloses that "in a column 95, for each network device, a *counter* (RESPONSE#) is stored which *keeps track of successful responses from the network device.*" See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is *incremented.*" See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular network device is configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *counter in Ellis is not a timer.* Therefore, Ellis does not disclose a *timer.* Neither does Ellis disclose an *idling operation of the response timer when the transmit sequence value corresponds to the receive sequence value.*

Ellis does not disclose "*restarting operation of the response timer when the transmit sequence value differs from the receive sequence value*" as recited in claim 10. Instead, Ellis discloses that "in a column 95, for each network device, a *counter* (RESPONSE#) is stored which *keeps track of successful responses from the network device.*" See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is *incremented.*" See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular network device is configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *counter in Ellis is not a timer.* Therefore, Ellis does not disclose a *timer.* Neither does *Ellis* disclose a *restarting operation of the response timer when the transmit sequence value differs from the receive sequence value.*

Ellis does not *disclose "selectively initializing a query timer with a maximum response time value*" as recited in claim 11. Instead, Ellis discloses that "in a column 95, for each network device, a *counter* (RESPONSE#) is stored which *keeps track of successful responses from the network device.*" See Column 5, Lines 36-40. Ellis further discloses that "if a response is received, in a step 113, the *counter* RESPONSE# is *incremented.*" See Column 6, Lines 36-37. As interpreted by the Applicant, Ellis discloses a particular counter associated with a particular network device is configured to count the number of times a successful response is received from the particular network device. As interpreted by the Applicant, the *counter in Ellis is not a timer.* Therefore, Ellis does not disclose a *timer.* Neither does Ellis disclose *selectively initializing a query timer* with a maximum time value.

Ellis does not disclose "*selectively modifying the response time value* to correspond to a *residual time value remaining in a response timer* after the second amount of time has passed" as recited in claim 12. Ellis does not disclose "wherein the *response time value is selectively modified to equal the residual time value plus a timer resolution value*" as recited

in claim 13. Instead, Ellis discloses that "when a message has been sent to the network device and a response received, in a step 103, hub manager 51 checks to see whether the elapsed time between sending a message and receiving a response (RESPONSETIME) is greater than the stored value of MAXTIME. RESPONSETIME time is measured from the last retry sent. If so, in a step 104, *MAXTIME* is *set to RESPONSETIME* and RETRYTIME is set to twice RESPONSETIME." See Column 5, Line 66 - Column 6, Line 7. As interpreted by the Applicant, Ellis discloses that the response time is set to the time it took the response to be received when the response time is greater than the stored value. However, Ellis does not disclose "*selectively modifying the response time value* to correspond to a *residual time value remaining in a response timer* after the second amount of time has passed" as recited in claim 12. Furthermore, Ellis does not disclose "wherein the response *time value is selectively modified to equal the residual time value plus a timer resolution value*" as recited in claim 13.

Ellis does not disclose "wherein the *central processing unit dynamically modifies the response time value* in response to the first amount of time" as recited in claim 18. Applicant has performed a word search *of "central processing unit"*, "computer", and "processor" in Ellis and was not able to locate the words "central processing unit", "computer", and "processor" or derivations of them. Applicant kindly requests the Examiner to particularly point out in Ellis were a central processing unit is disclosed.

Ellis does not disclose "means for *incrementing the response timer value* by a *preselected time period* in response to the first amount of time" as recited in claim 19. Instead, Ellis discloses that "in the preferred embodiment, upon receipt of a response to a message to a certain network device after execution of a timeout, the retry time and the retry value for the network device are increased. For example, the *retry time may be increased by two and retry value may be doubled.*" See Column 2, Lines 48-53. Ellis further discloses

that "the first message from the first network device to the second network device is *resent a number of times equal to the retry value*." See Column 1, Lines 63-66. As interpreted by the Applicant, the *retry time refers to the elapsed time between each resending of the first message*. As interpreted by the Applicant, *the number of times the first message is resent refers to the retry value*. As interpreted by the Applicant, the retry value and the retry time do not refer to a response timer value.

As a result of the foregoing, Applicant respectfully asserts that not each and every claim limitation was found within the cited prior art reference and thus claims 1-19 are not anticipated by Ellis.

VI. CONCLUSION

Applicant respectfully asserts that the claims are not anticipated by the cited prior art.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicant

By: _____
Robert A. Voigt, Jr.
Reg. No. 47,159

5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270-2199
(512) 370-2832

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1162:7036-P051US